S.B. CIVIL MISC. APPEAL NO. 219/1993
(Ashpurn Singh Vs. Shambhu Ram & ors.)

DATED : 21.07.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Roshanlal for the appellant
Mr.B.K.Bhatnagar for the respondents

This is claimant's appeal against rejection of his claim application by the Motor Accidents Claims Tribunal, Barmer only on the ground of limitation for the reason that the accident in question occurred on 19.03.1990 whereas the claim application was filed on 15.01.1992.

By way of the claim application aforesaid, the claimant-appellant claimed compensation with the submissions that on 19.03.1990 while riding a motorcycle, he was hit by a jeep bearing registration No.RNN 364 near Truck Union Office at Barmer and he sustained grievous injuries that resulted in permanent disability and further resulted in his being reverted to the lower grade in his service and he was required to spend substantial amount on treatment and diets. After filing of reply, learned Tribunal framed four issues for determination of the questions involved in the case on 03.03.1993 and on the same date, issue no.3 was considered and the claim application was rejected as barred by limitation. Issue No.3

reads as under:-

> "आया प्रार्थना पत्र घटना के करीब 22 माह देरी से पेश किया गया है, जो मियाद बाहर होने से चलने योग्य नहीं है ---- विप्रार्थी सं.1 क 1 ख

The Tribunal noticed the submissions of the applicant that he could not move the claim application earlier being under treatment and being bed ridden; but relying on the decision of the Hon'ble Supreme Court in Vinod Gurudas Raikar Vs. National Insurance Company Ltd.: 1991 ACJ 1060 the Tribunal held that in any case, the claim application could not be maintained after one year from the date of accident and present claim application having been filed after 22 months was clearly barred by limitation and hence rejected the same.

Learned counsel Mr.Roshanlal appearing for the appellant has contended with reference to the decision of the Hon'ble Supreme Court in Dhannalal Vs. D.P.Vijayvargiya and others : AIR 1996 SC 2155 that in view of the amendment brought about w.e.f. 14.11.1994 to the Motor Vehicles Act, 1988 deleting sub-section (3) of Section 166, limitation is not prescribed for filing claim application for compensation on account of a vehicular accident; and in view of the law laid down in Dhannalal's case, the present case being pending before this Court, deserves to be decided on merits. Learned counsel Mr.B.K.Bhatnagar appearing for the respondents

attempted to support the impugned award with reference to the decision in Vinod Gurudas Raikar's case (supra).

Having heard learned counsel for the parties, this Court is of opinion that in view of the law laid down by the Hon'ble Supreme Court in Dhannalal's case (supra), deletion of sub-section (3) of Section 166 of the Motor Vehicles Act appertains to the benefit of appellant-claimant in the present case too as the matter is pending consideration before this Court. The Hon'ble Supreme Court has clearly laid down that the benefit of amendment of sub-section (3) of Section 166 applies to the cases where the matter is pending either before the Tribunal or before the High Court or before the Supreme Court. The present appeal having been admitted on 16.07.1993 and having remained pending before this Court, there is no reason to deny the benefit of amendment to sub-section (3) of Section 166 to the petitioner and, therefore, the claim application deserves to be considered on merits.

As noticed above, on the very date of framing of issues, the Tribunal proceeded to dispose of the claim application and no evidence has been recorded in this matter and, therefore, there is no material before this Court to arrive at any finding on other issues involved in the case on the question of negligence and so also on the quantum of compensation. In this view of the matter, though the case is an old one, the same is required to be remanded to the

Motor Accidents Claims Tribunal, Barmer for trial and disposal in accordance with law.

As a result of the aforesaid, this appeal succeeds to the extent indicated above; the impugned award dated 03.03.1993 is set aside and issue No.3 is held redundant. The matter stands remanded to the Motor Accidents Claims Tribunal, Barmer and the claim application shall stand restored to its original number with the Tribunal; and it shall be required of the Tribunal to proceed with the matter in accordance with law and to decide the same on merits expeditiously. Costs of this appeal shall follow the final result of claim case. Parties shall appear before the Tribunal on 30.08.2006. Record be sent back immediately.

[DINESH MAHESHWARI], J.

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